Supreme Court, U.S.
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No. 85-1486

In the Supreme Court of the United States

OCTOBER TERM, 1985

LOCAL 32, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, PETITIONER

v.

PACIFIC MARITIME ASSOCIATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the National Labor Relations Board properly found that the union violated Section 8(b)(4)(ii)(D) of the National Labor Relations Act by suing to enforce an arbitration award for an employer's failure to assign work to the union's members, where a prior Board decision under Section 10(k) of the Act awarded the work to employees of another employer represented by another union.

2. Whether the union's suit under Section 301 of the Labor Management Relations Act to enforce the arbitration award was properly dismissed by the district court where the award was inconsistent with the Board's Section 10(k) determination.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A16) is reported at 773 F.2d 1012. The opinion of the district court (Pet. App. A19-A21) is unreported. The decisions of the National Labor Relations Board (Pet. App. A22-A43, A44-A55) are reported at 271 N.L.R.B. 759 and 256 N.L.R.B. 167.

JURISDICTION

The judgment of the court of appeals was entered on October 7, 1985. A petition for rehearing and suggestion for rehearing en banc were denied on December 10, 1985 (Pet. App. A17-A18). The petition for a writ of certiorari was filed on March 5, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Weyerhaeuser, an integrated forest products company, owns and operates a dock at Everett, Washington. Goods produced at Weyerhaeuser mills in the Pacific Northwest are stored in warehouses at the dock and then shipped in barges and ocean-going vessels. Weyerhaeuser employees at the Everett dock are represented by the Association of Western Pulp and Paper Workers (AWPPW). Weyerhaeuser's AWPPW employees are responsible for tying the ships to the dock, moving goods from Weyerhaeuser's warehouse to shipside, and casting off the ship's tie-up lines. Pet. App. A25-A27, A45-A46.

After the goods have been placed at shipside by Weyerhaeuser's AWPPW employees, the cargo is loaded into ships by employees of stevedoring companies under contract with Weyerhaeuser. The stevedoring companies involved in this case, Jones-Washington Stevedoring Company and Crescent City Marine Ways and Drydock Company, are members of the Pacific Maritime Association (PMA), a multi-employer group. Their employees are covered by a collective bargaining agreement between PMA and petitioner Local 32, International Longshoremen's and Warehousemen's Union. That agreement is known as the Pacific Coast Longshore Contract Docu-

ment (PCLCD). Weyerhaeuser is not a member of PMA and is not a party to the PCLCD. Pet. App. A2, A26-A27, A47.

Until late 1980, Weyerhaeuser conducted manufacturing operations at a mill adjacent to the Everett dock. Production employees at the mill were also represented by AWPPW. In December 1980, Weyerhaeuser ceased manufacturing at that mill. Stockpiled goods from that plant and goods from other facilities continued to be shipped from the Everett dock, however, and operations at the dock continued in the same manner as before. Weyerhaeuser employees represented by AWPPW continued to move goods from their last place of rest to shipside and to tie up and cast off vessels. Stevedore employees represented by petitioner continued to move goods from shipside into the ships. Pet. App. A27, A47-A48.

On December 21, 1980, Jones-Washington employees, represented by petitioner, engaged in a 45-minute work stoppage at the Everett dock to protest Weyerhaeuser's continuing assignment of its own employees, represented by AWPPW, for line handling and storage-to-shipside movement of cargo (Pet. App. A27, A48). Weyerhaeuser filed an unfair labor practice charge with the National Labor Relations Board alleging that petitioner violated Section 8(b)(4)(D) of the National Labor Relations Act, 29 U.S.C. 158(b)(4)(D), by engaging in a work stoppage at the Everett dock with the purpose of forcing the assignment of work performed by Weyerhaeuser's AWPPW employees to employees of stevedoring contractors represented by petitioner.[1] Pursuant to Sec-

[1] Section 8(b)(4)(D) provides that it shall be an unfair labor practice for a labor organization: (i) to engage in a

tion 10(k) of the Act, 29 U.S.C. 160(k), the Board scheduled a hearing on the jurisdictional dispute in which Weyerhaeuser, the AWPPW, and petitioner participated (Pet. App. A27, A44).

On May 27, 1981, the Board issued a Decision and Determination of Dispute under Section 10(k) awarding the disputed work to the Weyerhaeuser employees represented by AWPPW (Pet. App. A44-A55). The Board specifically noted that "[t]here are no collective-bargaining agreements to which all parties in the instant dispute are signatories" and that "there exists no agreed-upon method for the voluntary adjustment of the dispute" (*id.* at A50). The Board awarded the work to Weyerhaeuser's AWPPW employees based on "the expressed preference of [Weyerhaeuser]; the longstanding history of assigning the disputed work to employees represented by AWPPW"; provisions in the PCLCD contract "which indicate[] deference to existing work assignments; and the consideration of relative skills and economy of operations" (*id.* at A54). On June 8, 1981, petitioner notified the Board that it intended to comply with the Board's Section 10(k) determination (*id.* at A28). Weyerhaeuser's unfair labor practice charge accordingly was dismissed (*ibid.*). See 29 U.S.C. 160(k).

2. Meanwhile, prior to the Board's Section 10(k) decision, petitioner filed a grievance under the PCLCD alleging that Crescent City had violated the terms of that agreement by not obtaining the work assigned by Weyerhaeuser to its AWPPW-represented

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strike or work stoppage, or (ii) to threaten or coerce any person, with the goal of forcing an employer to assign work to one group of employees rather than to another group of employees. 29 U.S.C. 158(b)(4)(D).

employees for Crescent City's employees represented by petitioner (Pet. App. A40-A42). On September 16, 1981, after the Board had issued its Section 10(k) decision, an arbitrator upheld petitioner's grievance and concluded that under the PCLCD the disputed work should be assigned to stevedore employees represented by petitioner. The arbitrator awarded "time-in-lieu" payments for work that instead was performed by Weyerhaeuser's AWPPW employees (*id.* at A28, A40-A42). Because Weyerhaeuser and the AWPPW were not parties to the PCLCD, neither was eligible to participate in that proceeding.

On October 9, 1981, representatives of petitioner visited Jones-Washington's manager and asked whether Jones-Washington was going to abide by the arbitration award and dispatch employees represented by petitioner to do the work previously done by Weyerhaeuser employees. Jones-Washington's manager told petitioner that "we were going to order labor as directed by Weyerhaeuser and that was the only way we could go under the circumstances" (Pet. App. A28). When petitioner repeated its inquiry at a meeting the next day, a Jones-Washington official replied that the company could not claim the work for employees represented by petitioner because "there had been a ruling by the National Labor Relations Board awarding the work to Weyerhaeuser employees" represented by AWPPW (*id.* at A29).

On October 14, 1981, counsel for petitioner advised the Board by letter that petitioner intended to take "all appropriate legal action to enforce the right of its members to time in lieu payments pursuant to the * * * arbitration award" (Pet. App. A30). Soon thereafter, petitioner filed suit under Section 301(a)

of the Labor Management Relations Act (LMRA), 29 U.S.C. 185(a), seeking enforcement of the arbitration award and time-in-lieu payments for the disputed work. In response to petitioner's statement of its intent to pursue claims under the arbitration award, the Board's Acting Regional Director revoked his dismissal of the unfair labor practice charge and issued a complaint against petitioner (Pet. App. A30).

The Board, adopting the findings and conclusions of the administrative law judge (ALJ), found that petitioner violated Section 8(b)(4)(ii)(D) of the National Labor Relations Act (29 U.S.C. 158(b)(4)(ii)(D)) by filing monetary claims under and seeking judicial enforcement of the arbitration award (Pet. App. A22-23, A24-A43). The Board stated that "the Board's Section 10(k) awards take precedence over any and all contrary arbitration awards" (Pet. App. A23), citing *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261 (1964). The Board also found that petitioner's attempt to enforce the arbitration award constituted a refusal to comply with the Board's determination under Section 10(k) that the work in dispute was to be performed by Weyerhaeuser's AWPPW employees (Pet. App. A22-A23) and was "but a continuation of its jurisdictional claim to the work to which the Board has found it is not entitled" (Pet. App. A32 (opinion of ALJ)). The Board adopted the ALJ's finding that "the original work stoppage occurred because [petitioner] sought the work in dispute and that it continued to seek assignment of the disputed work to it, contrary to the Board's Decision and Determination of Dispute, through the imposition of a wage liability for unperformed work" (*ibid.*). It also adopted the finding that "if Jones[-Washington] is compelled to

pay wages for work not performed, it will suffer economically, and the incentive will be to either cease doing business with Weyerhaeuser or to force or require Weyerhaeuser to reassign the disputed work to [petitioner's] members" (Pet. App. A33).

The Board concluded that petitioner's attempted use of a Section 301 suit "to enforce an arbitration award contrary to the Board's Section 10(k) award" resulted in "prohibited economic coercion * * * with an object of forcing or requiring Weyerhaeuser to assign the disputed work to its members rather than to employees who are members of AWPPW" (Pet. App. A23, A35-A36). The Board ordered petitioner to cease and desist from refusing to honor the Board's Section 10(k) decision "by filing 'time-in-lieu' claims * * * and by maintaining a lawsuit" seeking to enforce the arbitration award and compel the payment of damages (*id.* at A37).

Shortly after the Board's decision in the unfair labor practice case, the United States District Court for the Western District of Washington dismissed petitioner's Section 301 suit (Pet. App. A19-A21). The district court concluded that the arbitration award conflicted with the Board's Section 10(k) determination and that, "as between the two, the 10(k) determination of the NLRB must be deemed controlling" (*id.* at A21).[2]

3. The court of appeals enforced the Board's unfair labor practice order and upheld the district court's dismissal of the Section 301 action (Pet. App. A1-A16). The court agreed with the Board that "a section 10(k) decision must be given precedence over an arbitrator's contrary decision" (*id.* at A6, A15)

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[2] The Board intervened in the district court proceeding and urged that the lawsuit be dismissed.

and that "the arbitrator's award here conflicts with the NLRB's section 10(k) assignment of work to the AWPPW" (*id.* at A9). The court concluded that because petitioner's suit was an attempt "to circumvent the section 10(k) decision," an objective prohibited under the Act, "its suit amounts to an unfair labor practice" (*id.* at A9). Similarly, the court upheld the district court's refusal to enforce the arbitration award (*id.* at A12-A15).

ARGUMENT

The court of appeals correctly applied settled principles to the facts of this case. Its decision does not conflict with decisions of this Court or of other courts of appeals. Further review is therefore unwarranted.

1. The controlling principles in this case are well established. Section 8(b)(4)(D) of the National Labor Relations Act states that it shall be an unfair labor practice for a union to strike or otherwise to "threaten, coerce, or restrain any person * * * where * * * an object thereof is * * * forcing or requiring any employer to assign particular work to employees" represented by that union rather than to employees represented by another union. 29 U.S.C. 158 (b)(4)(D). Unlike the statutory procedure governing other unfair labor practices—where, upon the filing of a meritorious charge, a complaint is issued and an unfair labor practice proceeding is immediately instituted—the Board, upon the filing of a meritorious Section 8(b)(4)(D) charge, must first address the underlying jurisdictional dispute. *NLRB* v. *Plasterers' Local Union No. 79*, 404 U.S. 116, 123-124 (1971). Under Section 10(k), "it is the Board's responsibility and duty to decide which of

two or more employee groups claiming the right to perform certain tasks is right and then specifically to award such tasks in accordance with its decision." *NLRB* v. *Radio Engineers Union Local 1212*, 364 U.S. 573, 586 (1961).[3]

Where the union charged with an unfair labor practice agrees to comply with the Board's award of work to a competing union, the charge will be dismissed. *International Telephone & Telegraph Corp.* v. *Local 134, IBEW*, 419 U.S. 428, 439 (1975). But if the charged union refuses to comply with the Board's Section 10(k) determination and award of work, the Board will issue a complaint alleging a violation of Section 8(b)(4)(D), and on the basis of the refusal to comply the union may "be found guilty of an unfair labor practice and be ordered to cease and desist." *NLRB* v. *Plasterers' Local Union No. 79*, 404 U.S. at 127.

The Board's Section 10(k) resolution precludes a contrary arbitration award. The courts, of course, have jurisdiction under Section 301 of the LMRA, 29 U.S.C. 185, to compel arbitration of a work assignment dispute arising from a collective bargaining agreement. *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261 (1964). However, once the Board has

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[3] Congress considered it "more important * * * that jurisdictional disputes be settled permanently than it is that unfair labor practice sanctions for jurisdictional strikes be imposed upon unions." *NLRB* v. *Radio Engineers Union Local 1212*, 364 U.S. at 576-577. Section 10(k) of the Act therefore requires that, absent a method for voluntary adjustment agreed upon by the parties, the Board must first determine the jurisdictional dispute between competing unions where, as in this case, one of the unions threatens or engages in a strike and is charged with a violation of Section 8(b)(4)(D). *Plasterers' Local Union No. 79*, 404 U.S. at 123-124, 137.

decided a work assignment dispute under Section 10 (k), the Board's decision is the final resolution of the matter and precludes enforcement of a contrary arbitration decision, whether the remedy is an actual award of the disputed work or an award of damages for the loss of such work. Thus, this Court has stated (375 U.S. at 272 (emphasis added)):

> Should the Board disagree with the arbiter * * * the Board's ruling would, of course, take precedence; *and if the employer's action had been in accord with that ruling, it would not be liable for damages under Section 301.*

In cases of conflict between an arbitration award and a Board decision under Section 10(k), "[t]he superior authority of the Board may be invoked at any time" (*ibid.*).

2. Petitioner does not dispute that its work stoppage properly triggered the Board's Section 10(k) jurisdiction or that the Board validly awarded the disputed work to AWPPW employees.[4] Rather, petitioner contends that its Section 301 suit was not in derogation of the Board's Section 10(k) award and that, in any event, judicial action in pursuit of an

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[4] Contrary to petitioner's implication (Pet. 16-17), there is no issue here concerning whether the mere filing of a grievance over a disputed work assignment can trigger an unfair labor practice charge under Section 8(b)(4)(D). Petitioner cites a decision (Pet. 17 n.10) in which the Board found a violation of Section 8(b)(4)(D) based on the filing of a grievance prior to the Board's Section 10(k) determination. But that case has been remanded by the Ninth Circuit to the Board pursuant to its sua sponte request for reconsideration. *Local 7, International Longshoremen's & Warehousemen's Union*, 273 N.L.R.B. No. 58 (Dec. 14, 1984), motion to remand granted, No. 85-7028 (9th Cir. Mar. 11, 1986).

objective in derogation of the Section 10(k) award is not prohibited by Section 8(b)(4)(ii), 29 U.S.C. 158(b)(4)(ii). These contentions are meritless.

a. Petitioner argues (Pet. 12-15) that there is no conflict between the arbitration award it sought to enforce and the Board's Section 10(k) decision because Weyerhaeuser remained free to assign the disputed work to its own employees represented by AWPPW. Petitioner maintains that Jones-Washington and other stevedoring companies covered by the PCLCD contract could escape the time-in-lieu obligations by ceasing to enter "into arrangements whereby employees of Weyerhaeuser perform longshoring tasks reserved by the PCLCD to employees represented by [petitioner]" (Pet. 13). Petitioner further asserts that, should the stevedoring companies not choose that course, nothing in the Section 10(k) award precludes a damage award to its members for breach of the PCLCD (*ibid.*). The Board, the district court and the court of appeals all properly rejected that argument.

The Board's Section 10(k) award states that Weyerhaeuser employees, represented by AWPPW, "are entitled to perform the work of the handling of cargo from the warehouse or last point of rest to shipside and the tying up and casting off lines of vessels" at the Everett dock (Pet. App. A54). The arbitration award grants the same work to petitioner, stating that petitioner's claim for "the lines work and the movement of cargo from dock stowage to [shipside] at the T-M facility in Everett * * * is sustained" (Pet. App. A42). It is not possible to seek enforcement of the arbitration award's grant of the disputed work to petitioner and simultaneously respect the Board's contrary and controlling award of that same work to the AWPPW-represented employees. Indeed,

the arbitrator granted petitioner time-in-lieu payments based on his conclusion that members of the AWPPW were improperly utilized "to perform such work" (*ibid.*).

Plainly, a demand for wages for work that other employees are performing is simply one means of asserting a jurisdictional right to the work. "From a workman's point of view, the valuable part of a right to a particular job is the right to be paid for it." *NLRB* v. *Local 1291, International Longshoremen's Ass'n*, 368 F.2d 107, 110 (3d Cir. 1966), cert. denied, 386 U.S. 1033 (1967). As that court further stated (*ibid.*):

> It follows that if workmen, who are entitled to a job under the terms of a labor contract, agree to forego the obligation of working but not the concomitant right to payment, they have not disclaimed any significant right. When * * * one group insists that work, for which another group has contracted and is being paid, be assigned it, the fact that both groups are claiming pay for the same work suffices to create a jurisdictional dispute, and it is irrelevant that either group, or both, may manifest a willingness to take the pay and forego the work.

Accord *International Brotherhood of Carpenters* v. *C.J. Montag & Sons, Inc.*, 335 F.2d 216, 221 (9th Cir. 1964).

Furthermore, as the Board found (Pet. App. A23, A31-A32), the facts here establish that petitioner was attempting to use the arbitration award to obtain the disputed work. Soon after the arbitrator's decision, petitioner approached Jones-Washington and demanded that the disputed work be assigned to its members, notwithstanding the Section 10(k) award

to Weyerhaeuser's employees. As the administrative law judge noted, petitioner's business agent "admitted herein that one of the reasons Jones[-Washington] had been asked to live up to the [arbitration] award was because [petitioner] wanted the work in dispute. Thus, [petitioner's] claim that it does not seek assignment of the work covered by the 10(k) award has a hollow ring" (Pet. App. A32 (footnote omitted)).[5]

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[5] There is no substance to petitioner's assertion (Pet. 14-15) that its demand was not in derogation of the Section 10(k) award because it was not directly made to Weyerhaeuser. Petitioner knew that the stevedoring companies had no right to control the work at issue. In order to avoid the time-in-lieu payments, the stevedoring companies would be required to pressure Weyerhauser to reassign the disputed work to petitioner in violation of the Section 10(k) award. Plainly, petitioner did not expect the end result would be that the stevedoring companies would permanently cease doing business with Weyerhaeuser; that course would be irrationally self-defeating for petitioner. Instead, petitioner sought to force the stevedoring companies to pressure Weyerhaeuser to change its work assignment practices. Such secondary pressure by the union has consistently been held violative of Section 8(b)(4)(ii)(D). See *Millwrights Union Local 102*, 260 N.L.R.B. 972, 974 (1982); *Brotherhood of Teamsters Local 85*, 224 N.L.R.B. 801, 808 (1976). See also *NLRB* v. *Enterprise Ass'n of Pipefitters Local 638*, 429 U.S. 507, 515-519 (1977) (existence of a work assignment agreement with an employer does not legalize unlawful pressure directed at that employer designed to obtain work controlled by another employer). Petitioner's suggestion (Pet. 15 n.7) that only pressure exerted directly on the employer involved in the Section 10(k) process can be in derogation of a Section 10(k) award is erroneous. See *NLRB* v. *Local 825, International Union of Operating Engineers*, 400 U.S. 297, 305-306 (1971).

Petitioner's reliance (Pet. 13-14) on *Associated General Contractors of America, Inc.* v. *International Union of Operating Engineers, Local 701*, 529 F.2d 1395 (9th Cir.), cert. denied, 429 U.S. 822 (1976), is also misplaced. There, Local 701's con-

b. Petitioner further contends (Pet. 6-12) that, even if its Section 301 suit were in derogation of the Section 10(k) award, it cannot be the basis for an unfair labor practice under Section 8(b)(4)(ii)(D) because " 'judicial action' is not the kind of conduct which triggers the Board's jurisdiction" under that Section (Pet. 6). This contention is also mistaken.

As petitioner concedes (Pet. 8-10), this Court has held that a lawsuit, otherwise permissible under state or federal law, may be found to be unlawfully coercive where it has no reasonable basis in fact or law

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tract with Associated General Contractors (AGC) specified that AGC members could only subcontract to other AGC members and that all such members must assign certain work to employees represented by Local 701. An AGC member violated the agreement by subcontracting to an employer that was a member of the Northwest Association, whose members were contractually obligated to assign their work to employees represented by the Teamsters. Local 701 obtained an arbitration ruling that the collective bargaining agreement required the AGC member to use AGC subcontractors who would in turn use Local 701 labor. Meanwhile, the Northwest Association subcontractor received a Section 10(k) determination that the Teamsters were entitled to that subcontractor's work. The court found that there was no conflict between these decisions, noting that if AGC members complied with their contractual obligation to employ AGC subcontractors, both decisions could be respected. 529 F.2d at 1398. Here, by contrast, the stevedoring companies have no control over Weyerhaeuser and no power to assign the disputed work to petitioner's members in a way that would be consistent with the Board's Section 10(k) award. See Pet. App. A8. In all events, even if the cases were similar—and the court below found that they were not—the existence of an intra-circuit conflict would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957).

and is motivated by an intent to retaliate for the exercise of rights protected by the Act. *Bill Johnson's Restaurants, Inc.* v. *NLRB*, 461 U.S. 731 (1983). Petitioner's Section 301 suit has no basis in law or fact because, under *Carey* v. *Westinghouse*, *supra*, the arbitration award on which it is based must fail in the face of a contrary Section 10(k) determination. And, petitioner's suit is improperly motivated because it constituted an economic tactic designed to obtain the work that the Board has awarded to the AWPPW-represented employees.

Petitioner contends (Pet. 6-12), however, that *Bill Johnson's* has no application here because the case law under Section 8(b)(4)(ii) indicates that judicial action was not intended to be interdicted under that provision.[6] Petitioner relies (Pet. 7-8) on cases involving contract clauses alleged to violate the provisions of Section 8(e) of the Act, 29 U.S.C. 158(e), barring certain secondary boycott or "hot cargo" agreements. Three of the cases cited, however, involve contract clauses expressly protected under the "construction industry" proviso to Section 8(e), and the legislative history of the proviso makes clear that Congress contemplated that such clauses properly could be enforced by judicial means. See *Local Union No. 45, Sheet Metal Workers* v. *Hardy*, 332 F.2d 682, 686-687 (5th Cir. 1964) (summarizing legislative history); see also *Mishara Construction Co.* v. *IBEW, Local Union No. 284*, 554 F.2d 488, 492 (1st Cir. 1977); *Local 644, United Brotherhood of Carpenters*

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[6] *Bill Johnson's* involved Section 8(a)(1) of the Act, 29 U.S.C. 158(a)(1), which makes it unlawful for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157."

v. *NLRB*, 533 F.2d 1136, 1145 (D.C. Cir. 1975).[7] And, although in the remaining cases cited by petitioner the courts ultimately may have found that the contract clauses were unenforceable under Section 8(e), those lawsuits were not of themselves unfair labor practices under *Bill Johnson's* because at the time the parties brought the suits there had been no definitive determination of the legality of the clauses by the Board, and the suits therefore constituted colorable contract claims brought in a good faith attempt to enforce the contracts. The situation is much different when the party bringing the coercive lawsuit was also a party to a prior proceeding that finally and definitively adjudicated certain rights, and the only purpose of the current lawsuit is to thwart the exercise of those rights.

Contrary to petitioner's contention, there is no indication of a congressional intent to exclude suits to enforce arbitration decisions that are in direct conflict with a Board Section 10(k) award from Section 8(b)(4)(ii)'s broad proscription of union coercion or restraint of an employer. Instead, there is good reason for interpreting that proscription to encompass such suits, for they can only result in forcing the employer to take action that is contrary to a Board determination that the Act contemplates shall be the final resolution of the matter.[8] Any other result

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[7] The only legislative history concerning the permissibility of lawsuits under Section 8(b)(4)(ii) upon which petitioner relies (Pet. 12 & n.5) deals with the construction industry proviso of Section 8(e).

[8] As the court below noted in discussing the cases cited by petitioner (Pet. App. A11):

> In none of these cases * * * would the enforcement of the union's contract in court have resulted in a conflict

would undermine Section 10(k)'s purpose of finally and definitively resolving jurisdictional disputes and fostering labor peace. See *Radio Engineers Union Local 1212*, 364 U.S. at 576-577.

3. Regardless of whether petitioner's Section 301 suit to enforce its arbitration award was a violation of Section 8(b)(4)(ii)(D) of the Act, that suit was properly dismissed by the district court. The arbitration award was inconsistent with the Board's Section 10(k) decision, and, therefore, the Board's ruling "would, of course, take precedence." *Carey* v. *Westinghouse*, 375 U.S. at 272.[9] When the Board makes a Section 10(k) determination, the controversy is removed "from the field of private contractual rights into the higher ambit of public rights." *New Orleans Typographical Union No. 17* v. *NLRB*, 368 F.2d 755, 767 (5th Cir. 1966).

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with an existing section 10(k) Board determination. Thus, these decisions were never required to resolve the conflict between the policy of encouraging dispute resolution through the courts and the countervailing labor policy considerations of the supremacy doctrine.

[9] Petitioner does not dispute that the district court would be obliged to dismiss its Section 301 suit if the arbitration award were in direct conflict with the Board's Section 10(k) determination. Its argument for district court jurisdiction rests on the erroneous premise that there is no conflict between the two determinations. See Pet. 12-15.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1986

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 491507 20209